

[Superseded in part by Rev. Proc. 76-34]

## SECTION 1. PURPOSE AND SCOPE.

.01 The purpose of this Revenue Procedure is to provide procedures to be used by nonexempt charitable trusts described in section 4947(a)(1) of the Internal Revenue Code to obtain determinations of their foundation status under section 509(a)(3) of the Code. This Procedure is applicable to all section 4947(a)(1) trusts whether or not they are subject to the transitional rules of section 1.509(a)-4(i)(4) of the Income Tax Regulations (T.D. 7212, page 250).

.02 Charitable trusts that have received determination or ruling letters recognizing their exemption from tax under section 501(c)(3) of the Code are subject to section 508(b) of the Code. These trusts must file the notice required by section 508(b) in the manner provided in section 13.9 of the Temporary Regulations or they will be presumed to be private foundations. Filing a section 508(b) notice constitutes a request for a determination of private foundation status. Accordingly, this Procedure does not apply to such trusts. They may, however, refer to sections 3.02 and 3.03 below for guidance as to the information to be filed with section 508(b) notices where section 509(a)(3) of the Code is in question.

## SEC. 2. BACKGROUND

.01 A trust described in section 4947(a)(1) of the Code is one that is not exempt from tax under section 501(a) of the Code, has all of its unexpired interests devoted to one or more of the purposes described in section 170(c)(2)(B) of the Code, and is a trust for which a charitable deduction was allowed. These trusts are subject to the private foundation provision (Part II of subchapter F of Chapter 1 and Chapter 42 of the Code) except sections 508(a), (b), and (c) of the Code.

.02 Almost all section 4947(a)(1) trusts that are not private foundations are supporting organizations within the meaning of section 509(a)(3) of the Code. Certain of these trusts meet the requirements of section 509(a)(3) of the Code under the transitional rules of section 1.509(a)-4(i)(4) of the regulations.

.03 While section 4947(a)(1) trusts are not subject to the section 508(b) presumption of private foundation status, they may, nonetheless, secure a determination of their status.

## SEC. 3. PROCEDURE FOR REQUESTING DETERMINATIONS.

.01 A section 4947(a)(1) trust may request a determination of its status under section 509(a)(3) of the Code by filing a request with the District Director of Internal Revenue for the district where the trustee filing the trust's income tax return has his legal

residence or principal place of business.

.02 A request for a determination based on the transitional rules of section 1.509(a)-4(i)(4) of the regulations should include the following information:

1 The name of the trust, its address, and Employer Identification Number;

2 A statement as to whether it has received any contributions since November 20, 1970;

3 The name, address, and Employer Identification Number of the beneficiary organizations together with a statement that each such beneficiary organization is described in section 509(a)(1) or (2) of the Code;

4 If a beneficiary organization is not designated in the trust instrument, a copy of the court order, or other evidence establishing that such organization possesses an equitable interest in the trust;

5 A list of all of the trustees that have served on or after November 20, 1970, together with a statement stating whether such trustees were disqualified persons within the meaning of section 4946(a) of the Code (other than as foundation managers);

6 A copy of the trust instrument in effect on November 20, 1970, and all amendments adopted thereafter; and

7 A statement indicating what provision has been made to provide the beneficiaries with the annual reports required by section 1.509(a)-4(i)(4) of the regulations.

.03 A request for determination that is not based on the transitional rules of section 1.509(a)-4(i)(4) of the regulations should contain the following information:

1 The name of the trust, its address, and Employer Identification Number;

2 The name, address, and Employer Identification Number of the beneficiary organizations together with a statement that each such beneficiary organization is described in section 509(a)(1) or (2) of the Code;

3 A list of all of the trustees that have served on or after October 9, 1969, together with a statement stating whether such trustees were disqualified persons within the meaning of section 4946(a) of the Code (other than as foundation managers);

4 A copy of the trust instrument in effect on October 9, 1969, and all amendments adopted thereafter; and

5 Sufficient information to otherwise establish that the trust meets the

requirements of section 509(a)(3) of the Code as provided for in section 1.509(a)-4 of the regulations (other than section 1.509(a)-4(i)(4)).

#### SEC. 4. PROCESSING REQUESTS FOR DETERMINATIONS

.01 District Directors of the exempt organizations key districts and the Director of International Operations are authorized to issue determination letters with respect to section 509 of the Code. Requests for determinations will be forwarded upon receipt to the appropriate key district or the Office of International Operations. A list of the key district offices and the area covered by each is set out in section 4.01 of Revenue Procedure 72-4, C.B. 1972-1, 706.

.02 When used in the remainder of this Revenue Procedure, the term 'District Director' means the District Director of one of the 16 key district offices or the Director of International Operations.

.03 The District Director will issue determination letters where the issue is clearly covered by statute, Treasury Decision or regulation, or by a ruling, opinion, or court decision published in the Internal Revenue Bulletin.

.04 If, after reviewing a request for determination involving an issue described in section 4.03 above, the District Director concludes that an adverse decision is indicated, he will arrange a conference with representatives of the trust, if one has been requested before issuing an adverse determination letter. The trust is entitled to only one such conference as a matter of right.

.05 If a trust disagrees with a determination letter, it may ask the District Director to reconsider the matter. It may also ask the District Director to seek technical advice unless the determination letter was based on a technical advice memorandum. If the District Director in his discretion decides to seek technical advice, the procedures in Revenue Procedure 72-2, C.B. 1972-1, 695, will be followed.

.06 If a request for determination presents an issue that is not clearly covered by statute, Treasury Decision or regulation, or by a ruling, opinion, or court decision published in the Internal Revenue Bulletin, the District Director will seek technical advice under the procedures of Revenue Procedure 72-2 after advising the trust, as provided in section 4 of Revenue Procedure 72-2, and attempting to reach agreement on the facts and questions to be submitted. The District Director will issue the determination letter on the basis of the conclusions expressed in the technical advice memorandum, as provided in section 8.01 of Revenue Procedure 72-2. A copy of the technical memorandum will be furnished to the trust as provided in section 8 of Revenue Procedure 72-2.

#### SEC. 5. EFFECT OF A DETERMINATION LETTER

.01 Determination letters under section 509(a)(3) of the Code will be effective as of the date a trust is first deemed to meet the requirements of section 509(a)(3).

.02 A determination letter under section 509(a)(3) of the Code may not be relied upon if there is a material change in a trust's character that is inconsistent with the requirements of section 509(a)(3).